UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/21
15 January 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 5 of the provisional agenda

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

The right to food

Report of the High Commissioner for Human Rights

Introduction

1. On 17 November 1996, the World Food Summit adopted by consensus the Rome Declaration on World Food Security and the World Food Summit Plan of Action, which outline ways to achieve universal food security. The World Food Summit was the first global gathering of heads of State and Government since the World Food Conference in 1974 to address the problems of hunger and malnutrition at a time of growing international concern over the future of production and access to food supplies for an ever-increasing global population. Its purpose was to give new impetus to the struggle for food security by focusing the attention of policy and decision makers in the public and private sectors and the general public on food issues. The assembled leaders renewed their commitment to ensure that all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The Declaration and Plan of Action attribute to Governments the prime responsibility for achieving food security and outlining effective policies and strategies to make sustainable progress towards the elimination of hunger and malnutrition. The Plan of Action contains seven commitments, which are expected to lead to significant reductions in chronic hunger.

2. At its fifty-third session the Commission on Human Rights, in adopting resolution 1997/8, reaffirmed that hunger constituted an outrage and a violation of human dignity and, therefore, required the adoption of urgent measures at the national, regional and international level for its elimination.

3. In the same resolution, the Commission endorsed the request made in the World Food Summit Plan of Action to the United Nations High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the United Nations system and appropriate intergovernmental mechanisms, as well as non-governmental organizations, to define better the rights related to food in article 11 of the International Covenant on Economic, Social and Cultural Rights, and to propose ways to implement and realize those rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all.

4. In paragraph 7 of the resolution the High Commissioner for Human Rights was invited to report on the implementation of the resolution at the fifty-fourth session of the Commission.

Follow-up to objective 7.4 of the World Food Summit

5. In commitment seven of the World Food Summit Plan of Action, Governments committed themselves to implement, monitor and follow up the Plan of Action at all levels in cooperation with the international community. One of the objectives would be

> "To clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments, and to give particular attention to implementation and full and progressive realization of this right as a means of achieving food security for all".

6. Governments would invite the United Nations High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the United Nations system and appropriate intergovernmental mechanisms, "to better define (emphasis added) the rights related to food in article 11 of the Covenant and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all".

7. In the aftermath of the World Food Summit, several initiatives have been undertaken by the High Commissioner for Human Rights. The Committee on World Food of the Food and Agriculture Organization of the United Nations (FAO) security was addressed, a memorandum of understanding with FAO to enhance cooperation with a view to implementing the recommendations of the World Food Summit was concluded, and several meetings relating to the implementation of these recommendations took place in Rome and Geneva.

8. As a concrete and practical response to objective 7.4 of the Rome Declaration and Programme of Action, the Office of the High Commissioner for Human Rights considered it useful to organize an expert seminar on the right to adequate food in order to better define the rights relating to food in article 11 of the International Covenant on Economic, Social and Cultural Rights, and to propose ways to implement and realize those rights as a means of achieving the commitments and objectives of the World Food Summit. Following is a brief summary of the Consultation on the Right to Adequate Food.

Summary of the Consultation on the Right to Adequate Food

9. On 1 and 2 December 1997, the Office of the High Commissioner for Human Rights hosted a two-day consultation on the human right to adequate food, as a follow-up to objective 7.4 of the 1996 World Food Summit. The consultation began with a day of general discussions in the Committee on Economic, Social and Cultural Rights, followed by an expert seminar on the second day. In addition to numerous independent experts, representatives from FAO, World Food Programme, International Fund for Agricultural Development, Office of the United Nations High Commissioner for Refugees, the Subcommittee on Nutrition of the Administrative Committee on Coordination, as well as the Chairman of FAO's Committee on World Food Security participated in the Consultation.

10. The High Commissioner in her opening statement noted that, despite the indivisibility of all human rights, whereas clear standards had been set regarding the contents of civil and political rights, the precise meaning of economic, social and cultural rights remained vague in many instances. To support the efforts to examine the precise nature and standing of the rights contained in the International Covenant on Economic, Social and Cultural Rights, the High Commissioner suggested that States had a three-fold obligation to respect, protect and fulfil human rights.

11. In summarizing the general discussion in the Committee on Economic, Social and Cultural Rights, the Chairman of the Committee emphasized the broader human rights framework and listed six reasons why a human rights framework was important:

(a) It implied a normative, legal basis, even if that was not ideally drafted or spelled out with the desirable detail;

(b) Human rights were obligatory for States, not optional, in contrast to recommendations such as those of the World Summit on Social Development or the World Food Summit;

(c) By using a human rights entry point, the entire human rights framework is brought into play, civil and political as well as economic, social and cultural rights;

(d) International human rights should be matched with a corresponding legal basis within States;

(e) Human rights required active and effective remedies, not necessarily by the use of courts, but the human rights framework insisted on the existence of remedies;

(f) Rights implied accountability, both domestic and international.

12. The Chairman observed that the normative content of the right to food was relatively clear and that there was an agreement that the right to food did not, in general, mean a right to be provided for by the State. Direct provision by the State should be seen as the last resort, but there was much the State could do to create the conditions under which people could take care of their own needs, including for food. It was therefore important to clarify the obligations of States.

13. The Chairman considered it furthermore to be essential to bring in the entire human rights framework in looking at the right to food. The Committee on Economic, Social and Cultural Rights had to some extent neglected the civil and political parts, assuming that its work fell solely in "the other area" of economic, social and cultural rights. However, in the absence of a participatory process, the right to food would not progress.

14. The Special Rapporteur on the right to adequate food of the Sub-Commission on Prevention of Discrimination and Protection of Minorities considered it useful for the Committee on Economic, Social and Cultural Rights to adopt a general comment on the right to food. In making that comment it should be recognized that there was a general obligation of result (the enjoyment of adequate food), but that flexibility must remain to differentiate, depending on variations in the national context, the obligations of conduct by which States were required to bring about that result. States should be encouraged to present not only a description of the existing situation but the steps they were taking, including legislation, to remedy any gaps in the enjoyment by everyone of the right to food. It would appear useful to follow this up by revising the guidelines for reporting in accordance with the general comment.

15. The Special Rapporteur dealt in particular with the need to advance the implementation and realization of the right to food. Steps towards implementation by States could be taken in the form of legislative or administrative measures. Realization meant creating and sustaining conditions under which the right to food in fact was enjoyed, and could be expressed as obligations of result. Implementation must be carried out both at the national and international level. Priority is under international law given to implementation at the national level. Governments made commitments only in relation to their own population; they were reluctant to make commitments in relation to the populations of other countries or collective commitments, except on a voluntary basis.

16. A representative of the World Alliance for Nutrition and Human Rights (WANAHR) commended UNICEF for taking the broadest approach to development problems to date. The convening of the World Summit for Children in 1990 had contributed to an unprecedented number of ratifications of the Convention on the Rights of the Child, to which nearly all countries in the world were now parties. Nevertheless, a human rights approach could not be consolidated

overnight. It involved a transition from a needs approach to a rights approach and introduced a responsibility or an accountability analysis. For this purpose the matrix prepared by the Special Rapporteur of the Sub-Commission, first appearing in the study on the right to adequate food as a human right in 1987, was now widely used. The matrix offered an analytical framework which should be used both in analysis and in planning. Under each of the major headings in the matrix the content of the specific "boxes" should be worked out in a country context.

17. However, several aspects of the implementation issues go beyond what could come under the matrix and some implementation issues cut across the board, especially:

(a) The time frame. Interpreting the concept of "progressive realization" in article 2 of the Covenant was important. The latest target or milestone as set by the World Food Summit was to reduce by 50 per cent the number of undernourished by the year 2015. The opportunity to take the major targets from the various conferences and use them systematically in planning should be seized;

(b) Resource availability. It was noted in the Maastricht Guidelines* that violations of the Covenant occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights had referred to as a minimum core obligation to ensure the satisfaction of minimum essential levels of each of the rights. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, violating the Covenant. Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties. But what does it mean in terms of a core obligation for the right to food?

18. The Executive Director of FIAN - Foodfirst Information and Action Network introduced the International Code of Conduct on the Human Right to Adequate Food, drawn up in cooperation with numerous non-governmental organizations. He examined the framework for the implementation of this right at the national and the international levels, based on four levels of obligations: to respect, protect, facilitate and fulfil the right to food. He noted that the Code presupposed that States also held international obligations under this and other human rights, i.e. that they must, as a minimum, not undermine the possibility of other States to secure for their own inhabitants the enjoyment of the right to food. He also argued that international organizations held obligations, including the maintenance of systems for effective monitoring, developing effective international complaint procedures, the obligation to facilitate (technical assistance, technology transfer, etc.) and, where necessary, the obligation to contribute in the

---

* Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. An interpretive statement by an expert group meeting held in January 1997 on the occasion of the tenth anniversary of the Limburg Principles of the International Covenant on Economic, Social and Cultural Rights.

provision of food (humanitarian relief, food aid). He underlined that effective monitoring and complaint procedures must be separated from technical assistance.

19. A representative of the Jacques Maritain Institute described the Institute's involvement with the right to adequate food. He referred to the preparatory work for the Caracas conference hosted by the Presidency of Venezuela, held in July 1996 in advance of the World Food Summit, where the issue of a code of conduct on the right to food was discussed. He underlined the relationship to civil and political rights. Some of the civil and political rights, such as the right to life, had a qualitative aspect which provided a link to the right to food.

20. A staff member of the South African Human Rights Commission described the process of preparing a questionnaire addressed to all departments of the South African Government machinery regarding their attitudes and practice towards the implementation of economic, social and cultural rights through their mandates and portfolios. Regarding the right to food in South Africa, two Acts had been passed so far: the School Feeding Act and the Marketing of Agricultural Products Act.

21. A representative of the International Council of Jewish Women underlined the need to look at the right to food in connection with the rights of women as the major food producers in large parts of the world. She called for the active use of the Convention on the Elimination of All Forms of Discrimination against Women as an important instrument for this purpose.

22. The Director of the Agriculture and Economic Development Analysis Division of FAO, in referring to the paper contributed by FAO and based on the recommendations of the World Food Summit, focused his intervention on objective 7.4 as a means to achieve the objectives of the World Food Summit. He noted that in the Declaration and Plan of Action, the right to food is seen in the context of food security. The clarification of the right to food is presented as a means to realize the food security objectives of the World Food Summit. For FAO and the Committee on World Food Security the usefulness of the clarification of the right to food lay in the fact that the right could then be used as a basis for the operationalization of food security, and thereby facilitate the positive support which could be given by food agencies - within their particular area of functions - to better realize the right to food, through national measures and through international collaboration and assistance.

23. The Chairman of FAO's Committee on World Food Security observed that there was a need for a common understanding of the terms used in the human rights bodies, in FAO and other agencies, and among Governments. Consensus, however, was difficult to obtain. It was therefore a great step forward when the heads of State and Government, for the first time ever, invited the High Commissioner, in consultation with other appropriate institutions, to better define the rights related to food in article 11 of the Covenant and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit. The Committee on Food Security was now expecting a clarification of these terms, which would then be made use of in the further work with food security.

24. The Consultation should be seen as a first step in a longer-term process following up on objective 7.4 of the World Food Summit Plan of Action. In order to guide further initiatives, the Consultation adopted the following conclusions and recommendations. The High Commissioner considers the strengthening of partnerships with other United Nations agencies, academic and research institutions, as well as with non-governmental organizations to be of the utmost importance in this respect.

Conclusions of the Consultation on the Right to Food

25. The human right to adequate food is firmly established in international law, but its operational content and means of application are generally little understood. The right thus remains scarcely implemented.

26. A human-rights approach to food and nutrition problems is fundamentally different from basic-needs-oriented approaches to development. It introduces a normative basis which is obligatory, and thus requires a legislative response at the State level. This contrasts with the optional nature of recommendations and norms enunciated by such international conferences as the 1996 World Food Summit and the 1995 World Summit for Social Development. A rights approach implies that "beneficiaries" of development are active subjects and "claim holders" and stipulates duties or obligations for those against whom such claims can be held (objects or "duty bearers"), with the requirement of a corresponding claim or recourse mechanism. Such an approach introduces an accountability dimension not present in basic-needs strategies. A fundamental misunderstanding, which has impeded the implementation of the right to food, has been the notion that the principal obligation is for the State to feed the citizens under its jurisdiction (fulfil the right to food) - rather than respecting and protecting the rights related to food as well as emphasizing the obligations of individuals and civil society in this regard.

27. There is considerable agreement on the conceptual content of the right to adequate food, including relevant health and nutrition aspects, and future efforts in this regard need to be directed primarily at fine-tuning existing concepts. The principal challenge lies in achieving consensus on the corresponding obligations and their operationalization.

28. A basic analytical framework to define policies and programmes for the realization of the right to food exists; it should be used with flexibility in both rural and urban environments. More attention is needed to the role of women in realizing the right to food.

29. With regard to the implementation of the right to food, there is a clear division of labour between human rights institutions and development actors. At the international level this means that the United Nations human rights machinery, and notably the Committee on Economic, Social and Cultural Rights, is charged with monitoring the realization - and violation - of the right to adequate food, while the development agencies provide technical, financial and food assistance. For the food and development agencies, clarification of the right to food is essential for the operationalization of food security objectives, thereby facilitating the positive support which can be given by them, within their particular mandates and functions, to better realize this right through national measures and international collaboration.

30. The Maastricht Guidelines interpret the Covenant's call for the progressive realization of economic, social and cultural rights as requiring States to achieve specific targets to satisfy a normative standard ("obligation of result"). The global development conferences of the 1990s, from the 1990 World Summit for Children up to the 1996 World Food Summit, have provided important guidance in this regard, by providing quantitative, time-framed development - including food and nutrition - targets. Within this framework, States can now set their own country-specific targets as a means for realizing the right to adequate food.

Recommendations of the Consultation on the Right to Food

31. The participants recommended that the Committee on Economic, Social and Cultural Rights draft and adopt a general comment as a contribution to the clarification of the content of the right to adequate food. On that basis, the Committee might want to revise or add to existing reporting guidelines with a view to improving the dialogue with States on the implementation of the right at country level.

32. Whenever appropriate, the mandates of Special Rapporteurs should include the right to adequate food.

33. "Best practice" or country case studies on how the right to food is implemented are recommended as a means of supporting the promotion of a human rights approach to food and nutrition problems; case studies on the application of other economic, social and cultural rights would also be helpful.

34. It would be desirable for the Commission on Human Rights to explore ways in which it could advance, at the political level, the right to adequate food among its members as well as in the United Nations system, notably within the framework of the fiftieth Anniversary of the Universal Declaration on Human Rights.

35. In response to the World Food Summit's request, the High Commissioner may wish to consider practical ways of strengthening her Office's capacity to deal with the substantive issues of the right to food, including the possibility of appointing an external adviser on the right to food.

36. The High Commissioner may wish to place the issue of a coordinated approach to the right to adequate food throughout the United Nations system high on her agenda.

37. The Consultation recommends a follow-up meeting in early 1998 to pursue the discussions on the contents and means of implementation of the right to adequate food in order to provide the High Commissioner with a full set of recommendations concerning her response to the World Food Summit's request. On that occasion, the participation of human rights organizations currently concerned mainly with civil and political rights as well as that of development agencies not present at the December meeting should be ensured.